

July 24, 2014

Theodore J. Reynolds
Assistant City Attorney
City of Anaheim
200 S. Anaheim Blvd., Suite 356
Anaheim, CA 92805

Re: Your Request for Advice
Our File No. A-14-128

Dear Mr. Reynolds:

This letter responds to your request for advice on behalf of the Anaheim Planning Director regarding his responsibilities under the provisions of the Political Reform Act (the “Act”).¹ Please note that the Commission is not a finder of fact when rendering advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Thus, any advice we provide assumes the facts the requester provides to us are accurate.

QUESTIONS

1. Are the payments by the American Planning Association (the “APA”), a 501(c)(6) organization, for the conference registration fee and lodging for the Anaheim Planning Director considered to be “gifts” to the Planning Director reportable on a Form 700?
2. If it is a “gift,” has the Planning Director provided “consideration of equal or greater value” to the APA which would make the payment “income” rather than a “gift”?
3. Is there any exception under the Act that would apply, such that the Planning Director can accept the payments without reporting them on Form 700?
4. If the payments by the APA related to the conference registration fee and lodging for the Planning Director are considered to be “income,” rather than a gift, would the Planning Director be required to report on Form 700 the amounts received in light of the exclusion from

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

the definition of “income” set forth in Section 82030 of the Act for “income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title”?

CONCLUSION

1, 2 and 3. The conference registration fee (other than the portion attributable to food and beverages) is information material and therefore not a gift or income. The food and lodging will be considered income so long as consideration of equal or greater value is provided in exchange for the food and lodging. Whether consideration of equal or greater value has been provided in exchange for the food and lodging is a fact question. Because the Planning Director devoted “hundreds, maybe thousands of hours to planning the conference,” it would appear adequate consideration has been provided to APA for the payments to qualify as income. There are no applicable exceptions that would make the payment nonreportable.

4. The APA does business in the city. APA has members from your city, including the Planning Director, who pay dues to the APA. In addition, it has contracted to hold a conference in the city, which is a business transaction.

FACTS

The Planning Director of the City of Anaheim is a member of the California Chapter, APA and is a co-chair of the annual APA Conference, which will be held at the Disneyland Hotel in September 2014. The Disneyland Hotel is located within the City of Anaheim.

The APA has offered to provide the Planning Director with complimentary registration to the conference since she has devoted, by her estimate, “hundreds, maybe thousands of hours to planning the conference.” You have also been advised by the Planning Director that the APA requires her and other chair persons and/or representatives to be at the hotel and available to handle Conference-related issues on a 24/7 basis during the conference.

In addition to her volunteer duties as a co-chair, the Planning Director is attending the APA Conference for the purpose of gaining information related to her functions and duties as the Planning Director and bringing back said information to provide training and education to her employees.

In consideration for its contract for the use of the hotel facilities, the Disneyland Hotel has extended to APA the use of a certain number of hotel rooms at no charge, which the APA will allocate for use by representatives of the APA, including the Planning Director and other chair persons and/or APA representatives, for three nights. The estimated value of the conference registration is approximately \$600. Certain meals and snacks are provided as part of

the registration fee charged to attendees of the APA Conference. The estimated value of a hotel room is approximately \$200 per night.

The APA's website (<http://www.apacalifornia.org/>) describes its annual conference as follows:

"Each year the California Chapter organizes a statewide conference allowing members to receive educational opportunities and to network. These popular conferences attract planning professionals from all over California, the United States and throughout the world.

"Conferences typically include an opening reception, keynote speakers, concurrent tracks of programs and seminars including practical 'nuts and bolts' sessions, mobile workshops to local planning related venues, the APA California Awards event Dinner, and the California Planning Foundation auction to raise funds for scholarships that will be awarded to planning students."

You have been advised by a representative of the APA that it is a non-profit California corporation that has obtained from the Internal Revenue Service an exemption from taxation under Section 501(a) of the Internal Revenue Code as a Section 501(c)(6) organization. The APA is not a 501(c)(3) organization because it hires a lobbyist. A portion of the APA's membership dues is used to compensate its lobbyist. A Section 501(c)(6) organization is defined in Section 501(c)(6) of the Internal Revenue Code as follows:

"(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual."

The Bylaws of the APA, which are set forth on the APA's website describes the organization's purpose as follows:

"2.1 STATEMENT OF PURPOSES: The purposes of the California Chapter shall be to carry out the purposes and objectives of the American Planning Association (APA). The mission of the California Chapter is to bring together Californians to forge a better future. Toward that end, APA California will:

- Provide the vision and leadership that fosters better planning for California;
- Build public and political support for sound planning; and
- Provide its members with the tools, services and support that advance the art and science of planning."

ANALYSIS

Gift Rules and Exceptions

The term “gift” is defined in Section 82028(a) as:

“Any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.”

In an effort to reduce improper influences on public officials, the Act regulates the receipt of gifts by public officials in three ways:

- First, the Act places limitations on the acceptance of gifts by certain public officials. The current limit is \$440 from a single source in a calendar year. (Section 89503; Regulation 18940.2.) This gift limit applies to all elected state and local officials or other individuals designated in Section 87200; all candidates for state, local, or judicial office; and any employee designated in his or her agency’s conflict-of-interest code, as adopted pursuant to Section 87300, if the employee would be required to disclose the receipt of income or gifts from the source of the gift on his or her statement of economic interest. (Section 89503.)
- Secondly, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on certain public officials requiring that any gift (or any gifts that aggregate to \$50 or more from the same source) received during the calendar year are disclosed on the officials’ statements of economic interests. Reporting requirements apply to all officials listed in Section 87200 (Section 87202), all candidates for an office specified in Section 87200 (Section 87201), and employees designated in an agency’s conflict-of-interest code as specified in the code (Section 87302(b)).
- Finally, the Act prohibits any public official from making, participating in making, or using his or her position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$440 or more provided to, received by, or promised to the official within the 12 months prior to the date the decision is made. (Sections 87100, 87103(e), Regulations 18700, 18703.4.)

Absent an exception, free admission to an event and travel costs paid for by a third party for which the official does not provide consideration of equal or greater value are generally reportable gifts under the Act.

Admission Fee

The Act excludes from its definition of “gift” items classed as “informational material,” a term that includes “any item which serves primarily to convey information and which is provided for the purpose of assisting the recipient in the performance of his or her official duties or of the elective office he or she seeks.” (Section 82028(b)(1); Regulation 18942.1.) “Informational material” may include “[b]ooks, reports, pamphlets, calendars, periodicals, videotapes, or free or discounted admission to informational conferences or seminars.” (Regulation 18942.1(a).)

You stated that the conference in question is a statewide conference allowing members to receive educational opportunities and to network. These popular conferences attract planning professionals from all over California, the United States and throughout the world. “Conferences typically include an opening reception, keynote speakers, concurrent tracks of programs and seminars including practical ‘nuts and bolts’ sessions, mobile workshops to local planning related venues.”

We conclude the free admission to the conference is “informational material.”

Food at the Conference and Lodging

Informational Material: This exception does not include lodging or any food received at the event. In many cases, a payment for admission to a conference in which a meal and lodging is provided, the meal and lodging may be the only reportable expenses, as the conference itself would be considered informational material and therefore, an exception to the definition of gift.

Regulation 18950.1: You asked about the application of Regulation 18950.1. Regulation 18950.1 recognizes that certain payments made for agency business that do not confer a personal benefit on the official do not constitute gifts or income to an official because of the purpose for which the payments are made. Regulation 18950.1 provides criteria for determining when payments for travel made in conjunction with official agency business have no personal benefit to an official and do not constitute gifts or income to the official. The regulation requires the agency to maintain a report detailing any payment and to make that report available for public inspection even if the payments received by the agency are under the \$2,500 threshold for filing with the Commission.

“(a) This regulation applies solely to a travel payment that meets all of the following requirements:

“(1) The payment is made directly to or coordinated with the government employer as set forth in subdivision (b) below and not made to the employee using the travel;

“(2) The payment is used for official agency business as specified in subdivision (c) below;

“(3) The government employer determines the official who will make use of the payment as provided in subdivision (d) below;

“(4) The payment provides no personal benefit to the official who make s use of the payment as provided in subdivision (e) below;

“(5) The duration of the travel is limited to that necessary to accomplish the purposes for which the travel was provided as determined by the governmental employer using the same standards imposed for travel paid with government funds.

“(6) The government employer reports the payment as provided in subdivision (f) below.

“(b) The payment must be made directly to the government employer or by arranging with the government employer any payments for transportation and lodging that are made directly to the provider of those services. Food may be accepted for attendance at an event where food is provided as part of the admission to the event. All other payments for food must be made to the government employer pursuant to the employer's per diem travel policy.

“(c) The payment is used for official agency business when made under any of the following circumstances:

“(1) The payment is made pursuant to a provision in a contract that requires the contracting party to pay any expenses associated with any required governmental travel resulting from the governmental agency's participation in the contract and the payment is used for that purpose.

“(2) The payment is made for the travel expenses of an official for the purpose of performing a regulatory inspection or auditing function that the governmental employer is mandated to perform.

“(3) The payment is made for the travel expenses of an official and the official is attending solely for purposes of providing training or educational information directly related to the governmental employer's functions or duties under the laws that it administers for individuals who are affected by those laws, and the payment is made by an organization to provide such training for its members.

“(4) The payment is made for the travel expenses of an official to an educational conference directly related to the governmental employer's functions or duties under the laws that it administers, the official is a named presenter at the conference, and the payment is made by the organizers of the event.

“(5) The payment is made for the travel expenses of an official for the purpose of receiving training directly related to the official's job duties and the payment is provided by an organization that commonly provides such training.

“(6) The payment is made for food provided to all attendees at a working group meeting in which the agency official participates as a representative of his or her agency in a working group meeting under his or her officially assigned job duties and the agency is authorized to provide an official to attend the meeting.

“(7) The payment is for travel expenses that are required to attend a location to view an in place operation, structure, facility, or available product where the viewing would substantially enhance an official's knowledge and understanding in making an informed decision to enter into a contract regarding a similar operation, structure, facility or purchase the product pursuant to the jurisdictional authority of the official's governmental employer.

“(d) The governmental employer shall select the official who will make use of the payment. If the payment is for expenses related to an oral presentation to either provide training on a subject on which the governmental employer provides training, or discuss policy and direction in implementing the functions of the governmental employer, the donor may request the official who is most qualified to make the presentation.

“(e) A payment made under any of the provisions of this regulation does not provide a personal benefit and is not a gift to the official who uses the payment, provided the payment complies with the following provisions:

“(1) The travel is for purposes approved by the governmental employer under the same requirements applicable to travel using its own funds, and the official is representing his or her governmental employer in the course and scope of his or her official duties.

“(2) Except as provided in subdivisions (b) and (g), the travel expenses are limited to no more than the expenses allowable for travel for agency business that would reasonably be paid at agency expense.

“(f) The payment is reported on a form prescribed by the Commission and maintained by the governmental employer as a public record subject to inspection

and copying under Section 81008(a) and signed by the authorizing official. Additionally, within 30 days after the end of a quarter year in which aggregated travel payment received by the governmental employer since the last required filing totaling \$2,500 or more, a copy of the form(s) or a summary of the information must be filed with the Commission (or, in the case of the Commission, the office of the Attorney General). If the governmental employer maintains a website, it shall also post a copy of the form or a summary of the information on the form on its website in a prominent fashion. A local jurisdiction may require additional filing at the local level for agencies within its jurisdiction. The form, or summary of information, must include the following information:

“(1) A date the travel occurred and an itemized breakdown of the amount paid for transportation, lodging, and food.

“(2) The name of the transportation provider, the type of transportation, and the name of the business where the lodging was provided.

“(3) The location of the travel.

“(4) The name and address of the donor. If the donor is not an individual, the report must also describe the business activity, or the nature and interests of the donor. If the donor raised funds from another person for the specific purpose of making the payment to the agency, the report must contain the name of each person and the amount given by each person.

“(5) The purpose of the travel, and department and position or title of the official who used the payment and the name of any elected or appointed official who uses the payment.

“(g) Nothing contained herein shall restrict a payment for any lodging or food if the lodging and food is provided at a site where the official attends a widely attended meeting or conference and the value is substantially equivalent in value to the lodging or food typically made available to the other attendees.

“(h) Limitations on Application of this Regulation. The exception for a travel payment provided under this regulation does not apply if the payment is made for travel by:

“(1) A state or local elected officer as defined in Section 82020, or an official specified in Section 87200, unless the transportation, lodging, and food is directly related to the official's public duties, is for a purpose that would otherwise be paid for with the agency's funds, is authorized in the same manner as

transportation, lodging, and food using the agency's own funds, and otherwise meets the requirements of subdivision (a) of this regulation.

“(2) Acceptance of a pass or discount from a transportation company by a public official prohibited under Article XII, Section 7 of the California Constitution.”

We do not have sufficient facts to determine if Regulation 18950.1 applies.

Section 89506: Under some circumstances, even though a payment for transportation, lodging, and subsistence may be a reportable gift under the Act, the gift is not subject to the Act’s current \$440 gift limit. In this regard, Section 89506(a) provides an exception from the gift limits for certain travel payments:

“(a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence that is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either of the following apply:

“(1) The travel is in connection with a speech given by the elected state officer, local elected officeholder, candidate for elected state office or local elected office, an individual specified in Section 87200, member of a state board or commission, or designated employee of a state or local government agency, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States.”

Regulation 18931.1 defines “speech” for purposes of Section 89506 as a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate. A “speech given” does not include a comedic, dramatic, musical, or other similar artistic performance. None of your facts suggest the Planning Director will be giving a “speech” as defined above. Therefore, the exception would not apply.

Income: Finally, the fact that the payment for meals and accommodations is a reportable event does not mean it is necessarily a gift that triggers all the repercussions of a receipt of a gift. Section 82028(a) defines a gift as “any payment to the extent that consideration of equal or greater value is not received...” Therefore, if the Planning Director can demonstrate that she provided consideration of equal or greater value in return for the meals and lodging, the Planning Director received income and not a gift. Based on the fact that the Planning Director of the City of Anaheim devoted “hundreds, maybe thousands of hours to planning the conference,” it would

appear adequate consideration has been provided to APA. Ultimately, however, this is a factual question.²

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: John W. Wallace
Assistant General Counsel
Legal Division

JWW:llh

² Your facts also raise a question as to the value of the lodging provided to the Planning Director. While the APA apparently received the lodging for no additional cost as a bonus under their contract with the hotel, the APA provided a benefit to the Planning Director when it conveyed the lodging to her.